

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1564 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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HARSHADKUMAR CHHOTALAL DUDHIA

Versus

HEIRS OF KANAJI MADHAJI THAKOR-RAJIBEN KANAJI THAKOR

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Appearance:

MR MB GANDHI for Petitioner

UNSERVED-REFUSED (N) for Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 2

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CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 16/03/98

ORAL JUDGEMENT

This Court, by order dated 6.2.1998 issued Notice to the respondents as to why this Civil Revision Application be not admitted and allowed. The notice was made returnable on 26.2.1998. In spite of service, none appeared on 26.2.98, and therefore, the case was adjourned to 06.3.98. The matter again appeared on 12.3.98. It has been adjourned to 16.3.98 i.e. today.

None has appeared for the respondents. In view of this, the matter is taken up today for final disposal.

2. The petitioner obtained a decree for specific performance in RCS No.225/93 by judgment dated 15.10.94. As per the decree, the defendant had required to execute the sale deed of the remaining land measuring 11416 sq.mtrs. i.e. 2/3rd of the land covered under the banakhat. The petitioner was required to undertake to make payment of the remaining amount of the consideration as provided in the agreement. The petitioner filed Execution Petition No.83/1994. Defendants No.6 to 9 executed sale deed on 8.2.1996 as per the decree and xerox copy of the said sale deed was produced before the Court. It was alleged that defendants No.1 to 5 are not executing the sale deed. A prayer was made to appointment of Commissioner to execute the sale deed in favour of the present petitioner. With respect to the land admeasuring 5708 sq.mtrs. i.e. to say 1/3rd portion of the land of Block No.1257. It may be stated here that before the filing of the suit, Punjaji Velaji and his heirs had executed the sale deed of 1/3rd portion of the land admeasuring 5708 sq.mtrs on 23.6.89. After the said application the judgment debtor opposed the execution petition and raised contention that there was no proper service on them and a wrong endorsement has been obtained and in view of this the decree obtained is illegal. Certain other contentions were raised with respect to pendency of the proceedings in the Revenue Court etc. The Executing Court, by the impugned order dated 17.6.1997, directed the parties to produce written and oral evidence with respect to the contentions raised.

3. It is contended by Mr M B Gandhi, learned Advocate for the petitioner that the Executing Court cannot go behind the decree and hold an enquiry with respect to proper service during the suit. I find substance in the contention raised by Mr Gandhi. Whether the decree for specific performance is legal or not on account of proper or improper service, cannot be examined by the Executing Court. This question can be looked into in appropriate proceedings if at all an application is filed for setting aside the ex-parte decree. These observations are not to be construed by either of the parties for filing any application for staying the ex-parte decree.

4. In view of the aforesaid, this Revision Application is allowed and the impugned order dated 17.6.1997 passed by the Civil Judge (SD), Mehsana is quashed and set aside. Rule made absolute.

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msp.